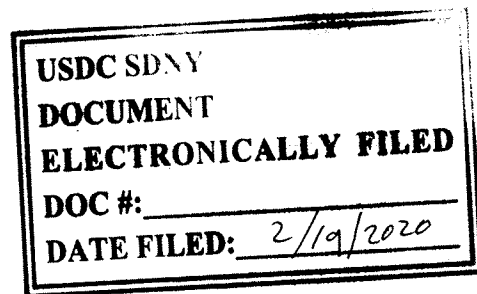


FHM ref: 15-19
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



IN THE MATTER OF THE COMPLAINT OF

HAPAG-LLOYD AKTIENGESELLSCHAFT
a/k/a HAPAG-LLOYD AG

AS OWNERS AND OPERATORS OF THE
M/V YANTIAN EXPRESS

19-CV-5731 (GHW)

**STIPULATED
CONFIDENTIALITY
AGREEMENT AND
PROTECTIVE ORDER**

ROBERT W. LEHRBURGER, Magistrate Judge:

WHEREAS, all of the parties to this action (collectively, the “Parties” and each individually, a “Party”) request that this Court issue a protective order, pursuant to Federal Rule of Civil Procedure 26(c), to protect the confidentiality of nonpublic and commercially or competitively sensitive information that they may need to disclose in connection with discovery in this action;

WHEREAS, the Parties, through counsel, agree to the following terms; and

WHEREAS, this Court finds that good cause exists for issuance of an appropriately tailored confidentiality order governing the pretrial phase of this action;

IT IS HEREBY ORDERED that the Parties to this action, their respective officers, agents, servants, employees, and attorneys, any other person in active concert or participation with any of the foregoing, and all other persons with actual notice of this Order will adhere to the following terms, upon pain of contempt:

1. With respect to “Discovery Material” (i.e., information of any kind produced or disclosed in the course of discovery in this action) that a person has designated as “Confidential” pursuant to this Order, no person subject to this Order may disclose such Confidential Discovery Material to anyone else except as expressly permitted hereunder:

2. The Party or person producing or disclosing Discovery Material (each, “Producing Party”) may designate as Confidential only the portion of such material that it reasonably and in good faith believes consists of:

- (a) previously non-disclosed and non-public financial information (including without limitation profitability reports or estimates, percentage fees, design fees, royalty rates, minimum guarantee payments, sales reports, and sale margins);
- (b) previously non-disclosed material relating to ownership or control of any non-public company;
- (c) previously non-disclosed business plans, product-development information, or marketing plans or other information the disclosure of which could cause substantial harm to a Party’s business;
- (d) any information of a personal or intimate nature regarding any individual; or
- (e) any other category of information given confidential status by this Court after the date of this Order.

3. With respect to the Confidential portion of any Discovery Material other than deposition transcripts and exhibits, the Producing Party or its counsel may designate such portion as “Confidential” by: (a) stamping or otherwise clearly marking as “Confidential” the protected portion in a manner that will not interfere with legibility or audibility; and (b) producing for future public use another copy of said Discovery Material with the confidential information redacted.

4. A Producing Party or its counsel may designate deposition exhibits or portions of deposition transcripts as Confidential Discovery Material either by: (a) indicating on the record during the deposition that a question calls for Confidential information, in which case the reporter will bind the transcript of the designated testimony in a separate volume and mark it as “Confidential Information Governed by Protective Order” or (b) notifying the reporter and all counsel of record, in writing, within 30 days after a deposition has concluded, of the specific pages and lines of the transcript that are to be designated “Confidential,” in which case all counsel receiving the transcript will be responsible for marking the copies of the designated transcript in their possession or under their control as directed by the Producing Party or that person’s counsel. During the 30-day period following a deposition, all Parties will treat the entire deposition transcript as if it had been designated Confidential.

5. If at any time before the termination of this action a Producing Party realizes that it should have designated as Confidential some portion(s) of Discovery Material that it previously produced without a Confidential designation, the Producing Party may so designate such material by notifying all Parties in writing. Thereafter, all persons subject to this Order will treat such designated portion(s) of the Discovery Material as Confidential. In addition, the Producing Party shall provide each other Party with replacement versions of such Discovery Material that bears the "Confidential" designation within two business days of providing such notice. The production of Discovery Material that is later designated as Confidential as provided herein or that otherwise is privileged or protected shall not constitute a waiver in whole or in part of the producing party's claim of confidentiality, privilege or protection. If such Discovery Material is filed with the Court before being marked Confidential or identified as privileged or protected, the party producing such material will be responsible for seeking appropriate relief from the Court.

6. Nothing contained in this Order will be construed as: (a) a waiver by a Party or person of its right to object to any discovery request; (b) a waiver of any privilege or protection; or (c) a ruling regarding the admissibility at trial of any document, testimony, or other evidence.

7. Where a Producing Party has designated Discovery Material as Confidential, other persons subject to this Order may disclose such information only to the following persons:

- (a) the Parties to this action, their insurers, and counsel to their insurers;
- (b) counsel retained specifically for this action, including any paralegal, clerical, or other assistant that such outside counsel employs and assigns to this matter;
- (c) outside vendors or service providers (such as copy-service providers and document-management consultants) that counsel hire and assign to this matter;
- (d) any mediator or arbitrator that the Parties engage in this matter or that this Court appoints, provided such person has first executed a Non-Disclosure Agreement in the form annexed as Exhibit A hereto;
- (e) as to any document, its author, its addressee, and any other person indicated on the face of the document as having received a copy;
- (f) any witness who counsel for a Party in good faith believes may be called to testify at trial or deposition in this action, provided such

person has first executed a Non-Disclosure Agreement in the form annexed as Exhibit A hereto;

- (g) any person a Party retains to serve as an expert witness or otherwise provide specialized advice to counsel in connection with this action, provided such person has first executed a Non-Disclosure Agreement in the form annexed as Exhibit A hereto;
- (h) stenographers engaged to transcribe depositions the Parties conduct in this action; and
- (i) this Court, including any appellate court, its support personnel, and court reporters.

8. Before disclosing any Confidential Discovery Material to any person referred to in subparagraphs 7(c), 7(d), 7(f), or 7(g) above, counsel must provide a copy of this Order to such person, who must sign a Non-Disclosure Agreement in the form annexed as Exhibit A hereto stating that he or she has read this Order and agrees to be bound by its terms. Said counsel must retain each signed Non-Disclosure Agreement, hold it in escrow, and produce it to opposing counsel either before such person is permitted to testify (at deposition or trial) or at the conclusion of the case, whichever comes first.

9. This Order binds the Parties and certain others to treat as Confidential any Discovery Materials so classified. The Court has not, however, made any finding regarding the confidentiality of any Discovery Materials, and retains full discretion to determine whether to afford confidential treatment to any Discovery Material designated as Confidential hereunder. All persons are placed on notice that the Court is unlikely to seal or otherwise afford confidential treatment to any Discovery Material introduced into evidence at trial, even if such material has previously been sealed or designated as Confidential.

10. In filing Confidential Discovery Material with this Court, or filing portions of any pleadings, motions, or other papers that disclose such Confidential Discovery Material ("Confidential Court Submission"), the Parties shall publicly file a redacted copy of the Confidential Court Submission via the Electronic Case Filing System. In accordance with Rule 4(A) of the Court's Individual Rules of Practice in Civil Cases, the Parties shall file an unredacted copy of the Confidential Court Submission under seal with the Clerk of this Court, and the Parties shall serve this Court and opposing counsel with unredacted courtesy copies of the Confidential Court Submission. In accordance with Rule 4(A) of this Court's Individual Rules of Practice in Civil Cases, any Party that seeks to file Confidential Discovery Material under seal must file an application and supporting declaration justifying—on a particularized basis—the sealing of such documents. The parties should be aware that the Court will unseal documents if it is unable to make "specific, on the record findings . . . demonstrating that closure

is essential to preserve higher values and is narrowly tailored to serve that interest.” *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006).

11. Any Party who objects to any designation of confidentiality may at any time before the trial of this action serve upon counsel for the Producing Party a written notice stating with particularity the grounds of the objection. If the Parties cannot reach agreement promptly, counsel for all affected Parties will address their dispute to this Court in accordance with paragraph 2(C) of this Court’s Individual Practices.

12. Any Party who requests additional limits on disclosure (such as “attorneys’ eyes only” in extraordinary circumstances) may at any time before the trial of this action serve upon counsel for the recipient Parties a written notice stating with particularity the grounds of the request. If the Parties cannot reach agreement promptly, counsel for all affected Parties will address their dispute to this Court in accordance with Rule 2(C) of this Court’s Individual Rules of Practice in Civil Cases.

13. Discovery Material, including Confidential Discovery Material under this Order, and the contents thereof shall be used solely for the prosecution and defense of this action and any appeals thereto, and not for any other purpose or in any other litigation proceeding. Nothing contained in this Order, however, will affect or restrict the rights of any Party with respect to its own documents or information produced in this action.

14. Nothing in this Order will prevent any Party from producing any Confidential Discovery Material in its possession in response to a lawful subpoena or other compulsory process, or if required to produce by law or by any government agency having jurisdiction, provided that such Party gives written notice to the Producing Party as soon as reasonably possible, and if permitted by the time allowed under the request, at least 10 days before any disclosure. Upon receiving such notice, the Producing Party will bear the burden to oppose compliance with the subpoena, other compulsory process, or other legal notice if the Producing Party deems it appropriate to do so.

15. Each person who has access to Discovery Material designated as Confidential pursuant to this Order must take all due precautions to prevent the unauthorized or inadvertent disclosure of such material.

16. Within 60 days of the final disposition of this action—including all appeals—all recipients of Confidential Discovery Material must either return it—including all copies thereof—to the Producing Party, or, upon permission of the Producing Party, destroy such material—including all copies thereof. In either event, by the 60-day deadline, the recipient must certify the return or destruction of Confidential Discovery Material by submitting a written certification to the Producing Party that affirms that it has not retained any copies, abstracts, compilations, summaries, notes, or other forms of reproducing or capturing any of the

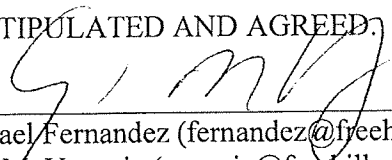
Confidential Discovery Material in whole or in part. Notwithstanding this provision, the attorneys that the Parties have specifically retained for this action may retain an archival copy of all pleadings, motion papers, transcripts, expert reports, legal memoranda, correspondence, or attorney work product, even if such materials contain Confidential Discovery Material. Any such archival copies that contain or constitute Confidential Discovery Material remain subject to this Order.

17. This Order will survive the termination of the litigation and will continue to be binding upon all persons subject to this Order to whom Confidential Discovery Material is produced or disclosed.

18. This Court will retain jurisdiction over all persons subject to this Order to the extent necessary to enforce any obligations arising hereunder or to impose sanctions for any contempt thereof.

19. This agreement may be executed by counsel in counterparts, all of which taken together shall constitute one and the same instrument, with facsimile copies or scanned copies to be accepted as originals.

SO STIPULATED AND AGREED.


Michael Fernandez (fernandez@freehill.com)
Gina M. Venezia (venezia@freehill.com)
Cody D. King (king@freehill.com)
Freehill, Hogan & Mahar, LLP
80 Pine Street
New York, NY 10005
212-425-1900 | Fax: 212-425-1901
Attorneys for Hapag Lloyd
Date: Feb 14, 2020

Martin Casey (mfc@caseybarnett.com)
Casey & Barnett, LLC
305 Broadway, Suite 1202
New York, NY 10007
212-286-0225 | Fax: 212-286-0261
Attorneys for Katoen
Date: _____

Anthony Pruzinsky (apruzinsky@hillrivkins.com)
Gerry White (gwhite@hillrivkins.com)
Jim Saville (jsaville@hillrivkins.com)
John Sullivan (jsullivan@hillrivkins.com)
45 Broadway, Suite 1500
NY, NY 10006
(212) 669-0600 | Fax: (212) 669-0698
Attorneys for Various Cargo Interests
Date: _____

James Krauzlis (jpk@caseybarnett.com)
Casey & Barnett, LLC
305 Broadway, Suite 1202
New York, NY 10007
212-286-0225 | Fax: 212-286-0261
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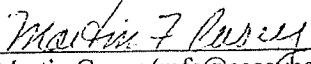
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Cody D. King (king@freehill.com)
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80 Pine Street
New York, NY 10005
212-425-1900 | Fax: 212-425-1901
Attorneys for Hapag Lloyd
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Martin Casey (mfc@caseybarnett.com)
Casey & Barnett, LLC
305 Broadway, Suite 1202
New York, NY 10007
212-286-0225 | Fax: 212-286-0261
Attorneys for Katoen
Date: 2/10/2020

Anthony Pruzinsky (apruzinsky@hillrivkins.com)
Gerry White (gwhite@hillrivkins.com)
Jim Saville (jsaville@hillrivkins.com)
John Sullivan (jsullivan@hillrivkins.com)
45 Broadway, Suite 1500
NY, NY 10006
(212) 669-0600 | Fax: (212) 669-0698
Attorneys for Various Cargo Interests
Date: _____

James Krauzlis (jpk@caseybarnett.com)
Casey & Barnett, LLC
305 Broadway, Suite 1202
New York, NY 10007
212-286-0225 | Fax: 212-286-0261
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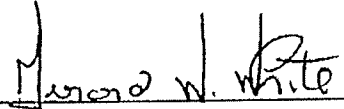
Date: _____

Keith Heard (kwh@implaw.net)

Lennon, Murphy, Caulfield & Phillips, LLC

420 Lexington Avenue, Suite 300

New York, NY 10170



Anthony Pruzinsky (apruzinsky@hillrivkins.com)

Gerry White (gwhite@hillrivkins.com)

Jim Saville (jsaville@hillrivkins.com)

John Sullivan (jsullivan@hillrivkins.com)

45 Broadway, Suite 1500

NY, NY 10006

(212) 669-0600 | Fax: (212) 669-0698

Attorneys for Various Cargo Interests

Date: 2.7.2020

James Krauzlis (jpk@caseybarnett.com)

Casey & Barnett, LLC

305 Broadway, Suite 1202

New York, NY 10007

212-286-0225 | Fax: 212-286-0261

Attorneys for Hartford Fire

Date: _____

Francis Montbach (FMontbach@Moundcotton.com)

Costantino Suriano (csuriano@moundcotton.com)

Mound Cotton Wollan & Greengrass (NYC)

One New York Plaza, 44th Floor

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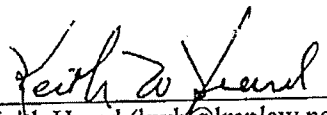
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Cody D. King (king@freehill.com)
Freehill, Hogan & Mahar, LLP
80 Pine Street
New York, NY 10005
212-425-1900 | Fax: 212-425-1901
Attorneys for Hapag Lloyd
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New York, NY 10007
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Gerry White (gwhite@hillrivkins.com)
Jim Saville (jsaville@hillrivkins.com)
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NY, NY 10006
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James Krauzlis (jpk@caseybarnett.com)
Casey & Barnett, LLC
305 Broadway, Suite 1202
New York, NY 10007
212-286-0225 | Fax: 212-286-0261
Attorneys for Hartford Fire
Date: 2/10/2020


Keith Heard (kwh@implaw.net)
Lennon, Murphy, Caulfield & Phillips, LLC
420 Lexington Avenue, Suite 300
New York, NY 10170
(212) 490.6050 | Fax: (212) 490-6070
Attorneys for Rooms to Go
Date: Feb. 10, 2020

Francis Montbach (FMontbach@Moundcotton.com)
Costantino Suriano (csuriano@moundcotton.com)
Mound Cotton Wollan & Greengrass (NYC)
One New York Plaza, 44th Floor
New York, NY 10004
Attorneys Various Cargo Interests
Date: _____

Rich Singleton (rsingleton@blankrome.com)
Emma Jones (ejones@blankrome.com)
Noe Hamra (NHamra@BlankRome.com)
Blank Rome LLP (NYC)
1271 Avenue of the Americas
New York, NY 10020
(212) 885-5000 | Fax: (212) 885-5001
Attorneys for Nissin
Date: _____

Tom Belknap (tbelknap@blankrome.com)
Noe Hamra (NHamra@BlankRome.com)
Blank Rome LLP (NYC)
1271 Avenue of the Americas
New York, NY 10020
(212) 885-5000 | Fax: (212) 885-5001
Attorneys for Fed Ex
Date: _____

Thomas Tisdale (ttisdale@tisdale-law.com)
Tisdale Law Offices, LLC
200 Park Avenue, Suite 1700
New York, NY 10166
212-354-0025 | Fax: 212-869-0067
Attorneys for Apex, Mid America, Rohlig & Sumisho Global, Pelorus Ocean Line
Date: _____

Peter Skoufalos (pskoufalos@browngavalas.com)
Brown Gavalas & Fromm LLP
555 Fifth Avenue
New York, NY 10017
(212) 983-8500 | Fax: (212) 983-5946
Attorneys for Eimskip
Date: _____

Charles Schmidt (cschmidt@klselaw.com)
Nathan Williams (nwilliams@klselaw.com)
Kennedy Lillis Schmidt & English
75 Maiden Lane
New York, NY 10038
212-430-0800 | Fax: 212-430-0810
Attorneys for Various Cargo Interests
Date: _____

Jim Sweeney (jsweeney@nicolettihornig.com)
Carole Rouffet (crouffet@nicolettihornig.com)
Sam Coluzzi (scoluzzi@nicolettihornig.com)
Will Fennell (wfennell@nicolettihornig.com)
Nicoletti Hornig & Sweeney
88 Pine Street, 7th Floor
New York, NY 10005
212-220-3830 | Fax: 212-825-1864
Attorneys for Liberty Mutual & Zurich
Date: _____

Keith Heard (kwh@implaw.net)
Lennon, Murphy, Caulfield & Phillips, LLC
420 Lexington Avenue, Suite 300
New York, NY 10170
(212) 490.6050 | Fax: (212) 490-6070

Attorneys for Rooms to Go

Date: _____

Rich Singleton (rsingleton@blankrome.com)
Emma Jones (ejones@blankrome.com)
Noe Hamra (NHamra@BlankRome.com)
Blank Rome LLP (NYC)
1271 Avenue of the Americas
New York, NY 10020
(212) 885-5000 | Fax: (212) 885-5001

Attorneys for Nissin

Date: _____

Thomas Tisdale (ttisdale@tisdale-law.com)
Tisdale Law Offices, LLC
200 Park Avenue, Suite 1700
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Charles Schmidt (cschmidt@klselaw.com)
Nathan Williams (nwilliams@klselaw.com)
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New York, NY 10038
212-430-0800 | Fax: 212-430-0810

Attorneys for Various Cargo Interests

Date: _____

Francis Montbach (FMontbach@Moundcotton.com)
Costantino Suriano (csuriano@moundcotton.com)
Mound Cotton Wollan & Greengrass (NYC)
One New York Plaza, 44th Floor
New York, NY 10004

Attorneys Various Cargo Interests

Date: _____

Tom Belknap (tbelknap@blankrome.com)
Noe Hamra (NHamra@BlankRome.com)
Blank Rome LLP (NYC)
1271 Avenue of the Americas
New York, NY 10020
(212) 885-5000 | Fax: (212) 885-5001

Attorneys for Fed Ex

Date: _____

Peter Skoufalos (pskoufalos@browngavalas.com)
Brown Gavalas & Fromm LLP
555 Fifth Avenue
New York, NY 10017
(212) 983-8500 | Fax: (212) 983-5946

Attorneys for Eimskip

Date: _____

Jim Sweeney (jsweeney@nicolettihornig.com)
Carole Rouffet (crouffet@nicolettihornig.com)
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Nicoletti Hornig & Sweeney
88 Pine Street, 7th Floor
New York, NY 10005
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Attorneys for Liberty Mutual & Zurich

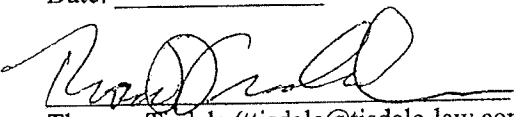
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New York, NY 10005
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Lennon, Murphy, Caulfield & Phillips, LLC
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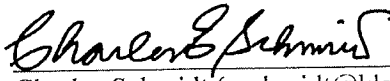
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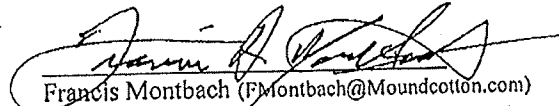
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Tisdale Law Offices, LLC
200 Park Avenue, Suite 1700
New York, NY 10166
212-354-0025 | Fax: 212-869-0067
*Attorneys for Apex, Mid America, Rohlig &
Sumisho Global, Pelorus Ocean Line*
Date: _____

Peter Skoufalos (pskoufalos@browngavalas.com)
Brown Gavalas & Fromm LLP
555 Fifth Avenue
New York, NY 10017
(212) 983-8500 | Fax: (212) 983-5946
Attorneys for Eimskip
Date: _____


Charles Schmidt (cschmidt@klselaw.com)
Nathan Williams (nwilliams@klselaw.com)
Kennedy Lillis Schmidt & English
75 Maiden Lane
New York, NY 10038
212-430-0800 | Fax: 212-430-0810
Attorneys for Various Cargo Interests
Date: 1/8/2020

Jim Sweeney (jsweeney@nicolettihornig.com)
Carole Rouffet (crouffet@nicolettihornig.com)
Sam Coluzzi (scoluzzi@nicolettihornig.com)
Will Fennell (wfennell@nicolettihornig.com)
Nicoletti Hornig & Sweeney
88 Pine Street, 7th Floor
New York, NY 10005
212-220-3830 | Fax: 212-825-1864
Attorneys for Liberty Mutual & Zurich
Date: _____

Keith Heard (kwh@implaw.net)
Lennon, Murphy, Caulfield & Phillips, LLC
420 Lexington Avenue, Suite 300
New York, NY 10170
(212) 490.6050 | Fax: (212) 490-6070
Attorneys for Rooms to Go
Date: _____


Francis Montbach (FMontbach@Moundcotton.com)
Costantino Suriano (csuriano@moundcotton.com)
Mound Cotton Wollan & Greengrass (NYC)
One New York Plaza, 44th Floor
New York, NY 10004
Attorneys Various Cargo Interests
Date: 2/10/20

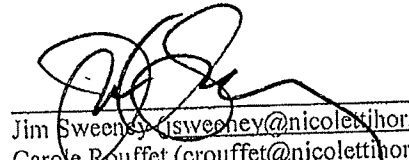
Rich Singleton (rsingleton@blankrome.com)
Emma Jones (ejones@blankrome.com)
Noe Hamra (NHamra@BlankRome.com)
Blank Rome LLP (NYC)
1271 Avenue of the Americas
New York, NY 10020
(212) 885-5000 | Fax: (212) 885-5001
Attorneys for Nissin
Date: _____

Tom Belknap (tbelknap@blankrome.com)
Noe Hamra (NHamra@BlankRome.com)
Blank Rome LLP (NYC)
1271 Avenue of the Americas
New York, NY 10020
(212) 885-5000 | Fax: (212) 885-5001
Attorneys for Fed Ex
Date: _____

Thomas Tisdale (ttisdale@tisdale-law.com)
Tisdale Law Offices, LLC
200 Park Avenue, Suite 1700
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Brown Gavalas & Fromm LLP
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New York, NY 10017
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Charles Schmidt (cschmidt@klselaw.com)
Nathan Williams (nwilliams@klselaw.com)
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75 Maiden Lane
New York, NY 10038
212-430-0800 | Fax: 212-430-0810
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Date: _____


Jim Sweeney (jsweeney@nicolettihornig.com)
Carole Rouffet (crouffet@nicolettihornig.com)
Sam Coluzzi (scoluzzi@nicolettihornig.com)
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New York, NY 10005
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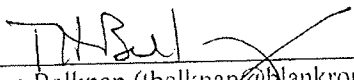
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420 Lexington Avenue, Suite 300
New York, NY 10170
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Blank Rome LLP (NYC)
1271 Avenue of the Americas
New York, NY 10020
(212) 885-5000 | Fax: (212) 885-5001
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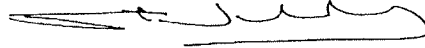
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Brown Gavalas & Fromm LLP
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New York, NY 10017
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Peter Skoufalos (pskoufalos@browngavalas.com)
Brown Gavalas & Fromm LLP
505 Fifth Avenue
New York, NY 10017
(212) 983-8500 | Fax: (212) 983-5946
Attorneys for Eimskip

Date: 02/10/2020

Charles Schmidt (cschmidt@klselaw.com)
Nathan Williams (nwilliams@klselaw.com)
Kennedy Lillis Schmidt & English
75 Maiden Lane
New York, NY 10038
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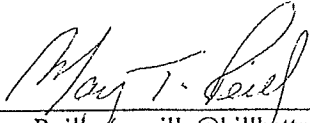
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88 Pine Street, 7th Floor
New York, NY 10005
212-220-3830 | Fax: 212-825-1864

Attorneys for Liberty Mutual & Zurich

Date: _____

Mary Reilly (mreilly@hillbetts.com)
Hill, Betts & Nash, LLP (NYC)
One World Financial Center
200 Liberty Street, 26th Floor
New York, NY 10281-1003
(212)-589-7553 | Fax: (212)-466-0514
Attorneys for VF Jeanswear
Date: _____

Juliette McCullough (jmccullough@cwlfirm.com)
Cox Wootton Lerner Griffin & Hansen, LLP
900 Front Street, Suite 350
San Francisco, CA 94111
Tel: (415) 438-4600 | Fax: (415) 439-4601
Attorneys for VF Jeanswear



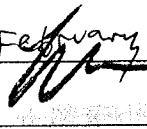
Mary Reilly (mreilly@hillbetts.com)
Hill, Betts & Nash, LLP (NYC)
One World Financial Center
200 Liberty Street, 26th Floor
New York, NY 10281-1003
(212)-589-7553 | Fax: (212)-466-0514
Attorneys for VF Jeanswear
Date: 2-12-20

Juliette McCullough (jmccullough@cwfirm.com)
Cox Wootton Lerner Griffin & Hansen, LLP
900 Front Street, Suite 350
San Francisco, CA 94111
Tel: (415) 438-4600 | Fax: (415) 439-4601
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Date: _____

Katie Jakola (kjakola@kirkland.com)
Kirkland & Ellis LLP
300 N. LaSalle
Chicago, IL 60654
312-862-2000
Attorneys for MGF Sourcing
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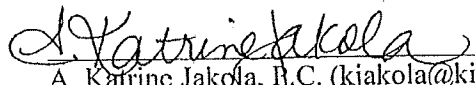
Raymond Waid (rwaid@liskow.com)
Liskow & Lewis
701 Poydras Street
Suite 5000
New Orleans, LA 70139
Attorneys for MGF Sourcing
Date: _____

Rodney Q. Fonda (RFonda@nicollblack.com)
Nicoll Black & Feig, PLLC
1325 4th Ave, Ste 1650
Seattle, WA 98101
206-838-7555
Attorney for Nike, Inc.
Date: _____

IT IS SO ORDERED this 19th day of February, 2020, at New York, NY.

2/19/2020
ROBERT W. LEHRBURGER
United States Magistrate Judge

Mary Reilly (mreilly@hillbetts.com)
Hill, Betts & Nash, LLP (NYC)
One World Financial Center
200 Liberty Street, 26th Floor
New York, NY 10281-1003
(212)-589-7553 | Fax: (212)-466-0514
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Date: _____

Juliette McCullough (jmcullough@cwfirm.com)
Cox Wootton Lerner Griffin & Hansen, LLP
900 Front Street, Suite 350
San Francisco, CA 94111
Tel: (415) 438-4600 | Fax: (415) 439-4601
Attorneys for VF Jeanswear
Date: _____


A. Katrine Jakola, P.C. (kjakola@kirkland.com)
Kirkland & Ellis LLP
300 N. LaSalle
Chicago, IL 60654
312-862-2000
Attorneys for MGF Sourcing
Date: 2/12/20

Raymond Waid (rwaid@liskow.com)
Liskow & Lewis
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New Orleans, LA 70139
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Rodney Q. Fonda (RFonda@nicollblack.com)
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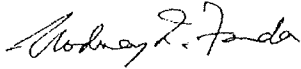
ROBERT W. LEHRBURGER
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Mary Reilly (mreilly@hillbetts.com)
Hill, Betts & Nash, LLP (NYC)
One World Financial Center
200 Liberty Street, 26th Floor
New York, NY 10281-1003
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Attorneys for VF Jeanswear
Date: _____

Juliette McCullough (jmccullough@cwlfirm.com)
Cox Wootton Lerner Griffin & Hansen, LLP
900 Front Street, Suite 350
San Francisco, CA 94111
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Chicago, IL 60654
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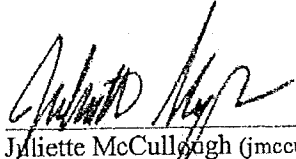


Rodney Q. Fonda (RFonda@nicollblack.com)
Nicol Black & Feig, PLLC
1325 4th Ave, Ste 1650
Seattle, WA 98101
206-838-7555
Attorney for Nike, Inc.
Date: 2/10/2020

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United States Magistrate Judge

Mary Reilly (mreilly@hillbetts.com)
Hill, Betts & Nash, LLP (NYC)
One World Financial Center
200 Liberty Street, 26th Floor
New York, NY 10281-1003
(212)-589-7553 | Fax: (212)-466-0514
Attorneys for VF Jeanswear
Date: _____


Juliette McCullough (jmccullough@cwlfirm.com)
Cox Wootton Lerner Griffin & Hansen, LLP
900 Front Street, Suite 350
San Francisco, CA 94111
Tel: (415) 438-4600 | Fax: (415) 439-4601
Attorneys for VF Jeanswear
Date: 2/12/20

Katie Jakola (kjakola@kirkland.com)
Kirkland & Ellis LLP
300 N. LaSalle
Chicago, IL 60654
312-862-2000
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Raymond Waid (rwaid@liskow.com)
Liskow & Lewis
701 Poydras Street
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Hill, Betts & Nash, LLP (NYC)
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New York, NY 10281-1003
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Juliette McCullough (jmccullough@cwlfirm.com)
Cox Wootton Lerner Griffin & Hansen, LLP
900 Front Street, Suite 350
San Francisco, CA 94111
Tel: (415) 438-4600 | Fax: (415) 439-4601
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Katie Jakola (kjakola@kirkland.com)
Kirkland & Ellis LLP
300 N. LaSalle
Chicago, IL 60654
312-862-2000
Attorneys for MGF Sourcing
Date: _____


Raymond Waid (rwaid@liskow.com)
Liskow & Lewis
701 Poydras Street
Suite 5000
New Orleans, LA 70139
Attorneys for MGF Sourcing
Date: 2/18/2020

Rodney Q. Fonda (RFonda@nicollblack.com)
Nicoll Black & Feig, PLLC
1325 4th Ave, Ste 1650
Seattle, WA 98101
206-838-7555
Attorney for Nike, Inc.
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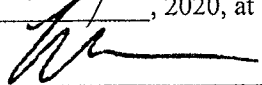

ROBERT W. LEHRBURGER
United States Magistrate Judge

Exhibit A
to Stipulated Confidentiality
Agreement and Protective Order

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF THE COMPLAINT OF _____
HAPAG-LLOYD AKTIENGESELLSCHAFT _____
a/k/a HAPAG-LLOYD AG _____
AS OWNERS AND OPERATORS OF THE _____
M/V YANTIAN EXPRESS. _____

1:19-cv-05731-GHW

NON-DISCLOSURE
AGREEMENT

I, _____, acknowledge that I have read and understand the Protective Order in this action governing the non-disclosure of those portions of Discovery Material that have been designated as Confidential. I agree that I will not disclose such Confidential Discovery Material to anyone other than for purposes of this litigation and that at the conclusion of the litigation I will return all discovery information to the Party or attorney from whom I received it. By acknowledging these obligations under the Protective Order, I understand that I am submitting myself to the jurisdiction of the United States District Court for the Southern District of New York for the purpose of any issue or dispute arising hereunder and that my willful violation of any term of the Protective Order could subject me to punishment for contempt of Court.

Name:
Date: